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CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES

Draft articles on the law of the non-navigational uses of international watercourses and resolution on confined transboundary groundwater

Report of the Secretary-General

Addendum

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II. COMMENTS AND OBSERVATIONS RECEIVED FROM STATES

A. General comments and observations on the draft

UNITED STATES OF AMERICA

[Original: English]

[7 October 1996]

The United States of America is pleased to provide the following comments, which supplement those previously submitted by the United States on 28 June 1996, on the draft articles adopted by the International Law Commission (ILC) on the law of the non-navigational uses of international watercourses. These comments, which are more detailed than those presented in June of this year, are intended to help facilitate the Working Group's October 1996 deliberations on this important topic. To accomplish this purpose, this paper presents some specific textual suggestions on how the superb work of the International Law Commission might be further refined in a few respects.

C. Comments and observations relating to specific draft articles

PART I. INTRODUCTION

Article 1. Scope of the present articles

UNITED STATES OF AMERICA

[Original: English]

[7 October 1996]

Scope of the Convention

The ILC commentary indicates that the drat articles were not intended to establish rules on the conservation and management of living resources (e.g., fish that occur in international watercourses). Indeed, had it been intended to cover the subject in the present instrument, the draft articles would have included numerous provisions setting forth how parties would regulate such activities. For example, agreements in this area typically have provisions on, among other things, the prevention of overfishing, minimization of by-catch and the promotion of maximum sustainable yield. Despite this intention, the conservation and management of living resources appears to fall within the current broad definitional scope of article 1, paragraph 1.

To clarify this issue, the Government of the United States suggests that an additional paragraph 3 be added to article 1:

"3. This Convention does not apply to the conservation and management of living resources that occur in international watercourses, except to the

extent provided for in Part IV and except insofar as other uses affect such resources."

Article 2. Use of terms

UNITED STATES OF AMERICA

[Original: English]

[7 October 1996]

Application of the Convention to Parties

It is the assumption of the United States that the rights and obligations under this convention would apply between and among parties to the convention and would not extend to States that were not parties to it. A small drafting change to the definition of "watercourse State" would clarify this point:

"(d) Watercourse State means a State that is a party to this convention in whose territory part of an international watercourse is situated."

Article 3. Watercourse agreements

UNITED STATES OF AMERICA

[Original: English]

[7 October 1996]

Watercourse agreements

In its 28 June 1996 comments, the United States noted that:

"The International Law Commission approach is to create a framework of principles that are essentially residual in nature and are subject to variation in particular agreements ...

"... [W]e will wish to review article 3 carefully, to ensure that it is clear that the new framework will not override existing cooperative arrangements, even where some issues dealt with in the International Law Commission articles are not also covered in the existing arrangements."

In this context, the Government of the United States notes that additional consideration might be given to article 3: (a) to include a provision clarifying the relationship of this convention to existing agreements; and (b) to accord wider scope for watercourse States, after the convention has entered into force, to adopt different rules for the use, conservation, and management of an international watercourse.

(a) Existing watercourse agreements

The current draft articles are silent on the relationship of the articles to pre-existing watercourse agreements. A large number of multilateral treaties contain provisions, known as "savings clauses", which describe the relationship of the multilateral treaty to other international agreements concluded by the parties. With respect to the use and regulation of international watercourses, a great number of existing international agreements allocate rights and responsibilities of parties. Where the relevant countries have concluded an agreement, except to the extent that such an agreement has an adverse effect on a watercourse State that is not party to that agreement, there would seem to be no reason for this convention to disturb the bargained-for exchange between or among the parties.

While it is clear that this convention should not alter the rights and obligations of watercourse States which arise from existing watercourse agreements, it is a more difficult question whether the convention should apply to the extent that an agreement regarding a watercourse or watercourses is silent on a particular issue (i.e., the extent to which this convention will fill lacunae in existing agreements). On the one hand, filling such lacunae may make sense if the parties to a particular agreement did not intend to create a comprehensive regime for regulating a watercourse. On the other hand, silence with respect to particular issues may reflect the bargained-for exchange of the parties (i.e., parties may have paid a price in an agreement for silence on a particular issue). Existing rules of treaty interpretation do not necessarily give a clear and comprehensive answer to whether this convention in any particular instance would be construed to fill such lacunae.

One approach that delegations might wish to consider would be a possible article under which each party to the convention could file a statement at the time it deposits its instrument of ratification, acceptance, approval or accession stating whether it intended for this agreement to fill lacunae in other agreements to which it was party.

(b) Future watercourse agreements

Scope of future agreements. Article 3 currently addresses some aspects relating to the conclusion of future agreements between and among watercourse States. Although as a matter of international law watercourse States should have wide latitude to apportion their rights and obligations in international agreements, paragraphs 1 and 3 of this article limit them to "apply[ing] and adjust[ing] the provisions of the present articles to the characteristics and uses of a particular international watercourse or part thereof". This language could be modified to give parties more flexibility to enter into agreements that may apportion their rights and obligations in ways different from this convention.

Relationship of this convention to future agreements. Although article 3 generally discusses aspects of future agreements, it does not specifically prescribe a rule describing the relationship between watercourse States' rights and obligations under the convention and their rights as parties to agreements

concluded after becoming party to the convention. A rule could be set forth more clearly.

Future agreements that may harm other watercourse States. Article 3, paragraph 2, provides that watercourse States may enter into an agreement "provided that the agreement does not adversely affect, to a significant extent, the use by one or more other watercourse States of the waters of the watercourse". Consideration might be given to whether the phrase "provided that" might be replaced with "to the extent that". This change would have the effect of only affecting the offending provisions of the bilateral agreement, rather than affecting the entire instrument.

(c) Drafting suggestions

Taking into account the issues described above, the United States suggests, for the attention of other delegations, a possible reformulation of article 3:

"Article 3

"Watercourse agreements

"1. This Convention shall not alter the rights and obligations of a watercourse State arising under other agreements in force on the date on which it becomes a party to this Convention.

"2. Watercourse States may enter into one or more agreements, hereinafter referred to as 'watercourse agreements', which alter, apply or adjust the provisions of this Convention in relation to the characteristics and uses of a particular international watercourse or part thereof. Subject to paragraph 3 of this article, unless such agreements provide otherwise, this Convention shall not alter the rights or obligations of watercourse States that arise from such agreements.

"3. Where a watercourse agreement is concluded between two or more watercourse States, it shall define the waters to which it applies. Such an agreement may be entered into with respect to any part thereof or a particular project, programme or use, [provided that the agreement does not adversely affect], [except insofar as the agreement adversely affects] to a significant extent, the use by one or more other watercourse States of the waters of the watercourse.

"4. Where a watercourse State considers that adjustment or application of the provisions of this convention is required, watercourse States shall consult with a view to negotiating in good faith for the purpose of concluding a watercourse agreement or agreements."

Article 7. Obligation not to cause significant harm

GREECE

[Original: French]

[8 October 1996]

The Government of Greece wishes to recall its position set forth in its previous observations on the draft articles as a whole. At this stage, it will confine itself to making a few additional comments concerning the new version of draft article 7.

That article was radically revised at the last minute by the International Law Commission. That revision has destroyed a balance, a genuine compromise, achieved with difficulty after several years' work. That compromise provided that the equitable and reasonable utilization envisaged in draft article 5 was utilization that did not cause significant harm to another watercourse State. That solution is simple, fair, clear and, above all, consistent with contemporary practice.

With the new version of article 7, the situation is completely different. There has been an uncalled-for change of criterion. Everything now depends on the notion, not defined in the draft articles and therefore vague and abstract, of "due diligence". Under the terms of this new proposal, a State can lawfully cause significant harm to other States of the same watercourse, provided that it confines itself within the limits of what article 7 calls "due diligence". Consequently, everything becomes imprecise and subjective. What now counts is the diligence exercised and not the significant harm itself, which is no longer the key factor. This new proposal clearly does not provide the necessary security that a codifying text should bring to inter-State relations.

For these reasons, the Government of Greece cannot accept this new version, and proposes that the previous version adopted on first reading should be reinstated.

PART IV. PROTECTION, PRESERVATION AND MANAGEMENT

General comments and observations on Part IV

UNITED STATES OF AMERICA

[Original: English]

[7 October 1996]

Standard of care

Obligations in Part IV are expressed without explicit reference to the standard of care that would apply to watercourse States (e.g., due diligence, all practical measures, strict liability). In many instances, the ILC

commentary describes what the intended standard would be. Delegations may wish to consider whether the standard of care should be expressed explicitly in those articles.

PART VI. MISCELLANEOUS PROVISIONS

Article 29. International watercourses and installations in time of armed conflict

UNITED STATES OF AMERICA

[Original: English]

[7 October 1996]

International watercourses and installations in time of armed conflict

Article 29 of the draft articles provides that "[i]nternational watercourses and related installations, facilities and other works shall enjoy the protection accorded by the principles and rules of international law applicable in international and internal armed conflict and shall not be used in violation of those principles and rules".

The ILC commentary describes the intended effect for this article:

"(1) ... The article, which is without prejudice to existing law, does not lay down any new rule. It simply serves as a reminder that the principles and rules of international law applicable in international and internal armed conflict contain important provisions concerning international watercourses and related works ...

"(2) The principles and rules of international law that are 'applicable' in a particular case are those that are binding on the States concerned. Just as article 29 does not alter or amend existing law, it also does not purport to extend the applicability of any instrument to States not parties to that instrument ..."

Despite this intention, the current draft could have two unintended consequences. First, the current passive voice formulation of the article (watercourses, installations, facilities and other works "shall enjoy the protection accorded by the principles and rules of international law ...") could be interpreted to impose obligations on a watercourse State that are derived from neither customary international law nor international agreements to which it is a party. Second, as article 29 would appear to create an obligation on watercourse States under this convention, it would also appear that the dispute resolution provisions in article 33 would, accordingly, apply to alleged law of war violations referred to in article 29.

Both issues could be addressed by placing the substance of article 29 in the convention's preamble, rather than in an operative paragraph. If this is not possible, article 29 might be redrafted slightly, as follows:

"Article 29

"International watercourses and installations in time of armed conflict

"Watercourse States shall observe their obligations under the principles and rules of international law applicable to them in international and non-international armed conflicts with respect to the protection of international watercourses and related installations, facilities and other works and shall not use such installations and facilities in violation of such obligations."

The United States also notes the statement in the commentary that "[o]f course, the present articles themselves remain in effect even in time of armed conflict ..." This statement does not fully address the complex issue of the effect of armed conflict on treaties. It also does not take into account instances in which there may be a conflict between this convention and the rules of armed conflict, such as the Geneva Conventions of 1949 and other relevant principles of customary international law.

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II. COMMENTS AND OBSERVATIONS RECEIVED FROM STATES

C. Comments and observations relating to specific draft articles

SUDAN

[Original: Arabic]

[9 October 1996]

PART I. INTRODUCTION

Article 1. Scope of the present articles

1. In addition to their application to the uses of the watercourse itself and the waters contained in it, it is important that the articles should apply to measures aimed at solving other watercourse problems, such as measures relating to maintenance, management, flood control, erosion and sedimentation.

2. The statement made in the commentary on article 1, paragraph 2, that navigation "requires that certain levels of water be maintained" raises an ambiguity that requires clarification. Although the use of an international waterway for navigational purposes is not one of the factors that are taken into account in defining equitable and reasonable utilization in accordance with draft article 6, this statement may nevertheless be used as a basis for preventing a particular State from obtaining its equitable and reasonable share on the grounds that navigation requires that certain levels of water be maintained.

Article 2. Use of terms

1. The inclusion of "groundwaters" in the definition of an international watercourse given in draft article 2 (b) would enable every State in which such groundwaters are located to claim that it is an international watercourse State and hence to claim a share of its waters. It is therefore possible that this text might create problems of a new kind, and we accordingly propose that the draft articles should deal only with surface waters. The International Law Association, which adopted the Helsinki Rules on the Uses of the Waters of International Rivers at its Fifty-second Conference, held in Helsinki in 1966, also adopted a resolution on international groundwater resources at its Sixty-second Conference, held in Seoul in 1986. There can be no doubt that this supports our proposal that groundwaters be excluded.

2. We propose that artificial canals be excluded, so that canals dug between a watercourse State and another State do not entail the other State becoming a watercourse State.

Article 3. Watercourse agreements

In connection with this article, we refer to article 53 of the Vienna Convention on the Law of Treaties, which states as follows:

> "A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purpose of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."

We also refer to article 64 of the Convention, which states as follows:

> "If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates."

In our estimation, the two articles quoted above raise the following questions:

(a) Despite the fact that the draft articles constitute a framework convention, they will nevertheless establish peremptory norms of international law with regard to international watercourses. Are we not therefore entitled to maintain that they will affect existing agreements through the application of articles 53 and 64 of the Vienna Convention on the Law of Treaties, at least in theory?

(b) The framework convention contains provisions that are formulated in non-prescriptive terms. Paragraph 1 of article 3, for example, states that watercourse States may enter into one or more agreements which apply the framework convention. It also contains provisions framed in terms of obligations and provisos. Paragraph 2 of article 3, for example, states that such an agreement shall define the waters to which it applies, and it lays down the proviso that the agreement should not adversely affect, to a significant extent, the use by one or more other watercourse States of the waters of the watercourse. Are provisions of these two types to be treated as merely guidelines for negotiations? In this connection, we should like to point out that the draft articles contain many provisions that are framed in mandatory terms, and we shall refer to those provisions in our observations on the relevant draft articles.

On the basis of the foregoing, we propose that the peremptory norms of international law contained in the framework convention should continue to be regarded as binding.

Article 4. Parties to watercourse agreements

Paragraph 2 of this article states that a watercourse State whose use of an international watercourse may be affected to a significant extent by the implementation of a proposed watercourse agreement that applies only to a part of the watercourse is entitled to participate in the negotiation of such an agreement and to become a party thereto. It is to be noted that the paragraph does not address the situation in cases where such an agreement is already in existence at the time the framework convention is adopted.

PART II. GENERAL PRINCIPLES

Article 5. Equitable and reasonable utilization and participation

Paragraph 5 of the commentary on article 5 states that the duty to cooperate and the correlative right to benefit provided for in paragraph 2 of article 5 are not dependent on a specific agreement for their implementation. In our view, this statement confirms that the peremptory norms of international law, including the obligation to cooperate and the right to benefit, are binding on all States without there being any need for their inclusion in a specific agreement. If so, this raises the same two questions as before concerning existing and subsequent agreements that violate such peremptory norms of international law. We consider that, pursuant to articles 53 and 64 of the aforesaid Vienna Convention on the Law of Treaties, such norms should not be violated under any circumstances, whether by existing or subsequent agreements.

Article 6. Factors relevant to equitable and reasonable utilization

1. Paragraph 3 of the commentary on this article states that "Some of the factors listed may be relevant in a particular case while others may not be ...". We do not believe this to be true, since our understanding of article 6, paragraph 1, is that all of the factors and circumstances listed in subparagraphs (a) to (g) are relevant and should be taken into account in addition to other factors and circumstances that are not specified since the list contained in the paragraph is indicative and not exhaustive.

2. Paragraph 3 of the commentary on article 6 also states that some factors and circumstances may be more important and deserve to be accorded greater weight. There is nothing in article 6 that corresponds to this statement, and we therefore propose that it be deleted. We note in this connection that article V, paragraph 2, of the Helsinki Rules deals with the question explicitly and unequivocally when it states that "Relevant factors which are to be considered include, but are not limited to: ...".

3. The Helsinki Rules state that in determining what is an equitable and reasonable share, all relevant factors must be considered together and a conclusion reached on the basis of the whole. We propose that a similar statement should be made in article 6 so as not to leave an opening for claims that some factors are more important than others.

Article 10. Relationship between different kinds of uses

1. Paragraph 1 of this article states that uses that have been accorded priority under an existing agreement or by custom continue to enjoy such priority, but that otherwise no use enjoys inherent priority. Paragraph 2 states that conflict between uses that do not have priority shall be resolved with reference to the principles and factors set out in articles 5 to 7, with special regard being given to the requirements of vital human needs. We propose that the following words be added at the end of the paragraph: "... of those living in the international watercourse basin in question."

2. Since paragraph 1 of article 4 states that every watercourse State is entitled to become a party to any watercourse agreement that applies to the entire international watercourse, it is not proper to impose on a State that will in future become a party to an agreement a priority enshrined in that agreement. Accordingly, we propose that paragraph 1 of article 10 be recast so as to accommodate that fact. It should be reformulated so that a priority is not binding in the case where it is stipulated in a watercourse agreement that applies to an entire international watercourse but where not every watercourse State is a party to the agreement.

3. Since article 6 contains many references to various uses and article 10 addresses the priorities for such uses and conflict between them, it may be appropriate for article 10 either to be incorporated into article 6 or to become article 7.

PART III. PLANNED MEASURES

Article 11. Information concerning planned measures

1. In order to differentiate between the information to be exchanged in accordance with article 9, paragraph 1, and the information to be exchanged in accordance with article 11, we propose that the words "concerning planned measures" be inserted in article 11 after the word "information". This proposal is supported by the fact that it is not conceivable for consultation on the possible effects of planned measures to take place before the information on those measures is available. The very heading of the article and the observations made on it also justify our proposal.

2. It might be useful to add at the end of article 11 a clause stating that the term "measures" includes new projects and programmes, the sense in which it is taken in paragraph 4 of the commentary on the article.

Article 12. Notification concerning planned measures with possible adverse effects

1. Since article 11 provides that information should be exchanged and that consultation should take place on the possible effects of planned measures and since article 12 provides that notification should be given before the implementation of particular measures that may have "a significant adverse effect", it may be appropriate to merge the two articles so that article 12 becomes a proviso in article 11.

2. In order to improve the drafting, we propose that the terms used in the Arabic text for "significant adverse effect" (athar salbi jasim) should be standardized. We find in article 3, paragraph 2, "ta'thir[an] salbi[yan] bi-darajah jasimah" ([does not] adversely affect, to a significant extent, ...), in article 4, paragraph 2, "ta'thir [i.e. yata'aththir] [...] bi-darajah jasimah" (may be affected to a significant extent), and in article 12 "athar salbi jasim" (a significant adverse effect), all referring to the same concept.

3. The use of the term "a significant adverse effect" for the criterion that triggers the procedures provided for in articles 12 to 19 instead of the term "significant harm" is justified in paragraph 2 of the commentary on article 12. It is thus not conceivable that a State should be compelled to give notification that it is planning to cause "significant harm", because such conduct would constitute a violation of the obligation laid down in article 7. Although this justification is acceptable, it nevertheless raises the question of whether the notion that significant adverse effect may not rise to the level of significant harm applies to all the articles in which reference is made to significant adverse effect, such as articles 3 and 4.

4. If, in the Arabic text, the word "al-mutahah" (available) used in article 12 means "al-mutawafirah adatan" (readily available) used in article 9, as is to be understood from paragraph 13 of the commentary on paragraph 9 and from paragraph 5 of the commentary on article 12, we propose that the wording should be standardized so that there is no confusion in understanding what is intended.

Article 13. Period for reply to notification

1. In the Arabic text, the statement made in paragraph 3 of the commentary on article 13 to the effect that the concluding clause (al-jumlah al-ikhtitamiyah) of article 13 reads "unless otherwise agreed" is incorrect and the clause in question comes at the beginning of the article. We therefore propose that the statement be amended.

2. Article 13 (a) does not specify the time with effect from which the six-month period begins. It may be useful to establish this as the date notification is received.

Article 14. Obligations of the notifying State during the period for reply

Our previous observations concerning the standardization of the terms "al-mutawafirah adatan" (readily available) in article 9 and "al-mutahah" (available) in article 12 apply also to this article.

PART IV. PROTECTION, PRESERVATION AND MANAGEMENT

Article 23. Protection and preservation of the marine environment

Article 23 raises the question of whether generally accepted international rules and standards are merely to be taken into account, as stated in the article, or are to be binding on States.

Article 24. Management

We note that, in the Arabic text of paragraphs 1, 4 and 5 of the commentary on article 24, the references to article 26 are incorrect and should be to article 24.

Article 25. Regulation

1. We note that, in the Arabic text of paragraphs 1 and 4 of the commentary on article 25, the references to article 27 are incorrect and should be to article 25.

2. We propose the deletion of the words "where appropriate" in paragraph 1 of the article, because cooperation in the areas mentioned in the paragraph is appropriate under all circumstances.

Article 26. Installations

1. We note that, in the Arabic text of paragraphs 1 and 5 of the commentary on article 26, the references to article 28 are incorrect and should be to article 26.

2. The statement in paragraph 2 of the commentary on article 26 to the effect that "there may be circumstances in which it would be appropriate for a watercourse State to participate in the maintenance and protection of works outside its territory as, for example, where it operated the works jointly with the State in which they were situated" is very reasonable and practical, particularly where the resources of the State concerned do not enable it to maintain and protect such works. We propose that a proviso to this effect should be explicitly incorporated into the text of article 26.

PART V. HARMFUL CONDITIONS AND EMERGENCY SITUATIONS

Article 27. Prevention and mitigation of harmful conditions

We note that, in the Arabic text of paragraphs 1, 3, 5 and 6 of the commentary on article 27, the references to article 24 are incorrect and should be to article 27.

Article 28. Emergency situations

1. We stress the importance of this article, which requires watercourse States to notify other States potentially affected by any emergency such as floods. It also requires them to notify competent international organizations.

2. We note that, in the Arabic text of paragraph 1 of the commentary on article 28, the reference to article 25 is incorrect and should be to article 28. Likewise, the reference in the same paragraph to article 24 is incorrect and should be to article 27.

PART VI. MISCELLANEOUS PROVISIONS

Article 29. International watercourses and installations in time of armed conflict

To maintain that the framework convention is not binding is inconceivable in the case of this article. It does not lay down any new rule but simply states that international watercourses and related installations, facilities and other works shall enjoy the protection accorded by the principles and rules of international law applicable in international and internal armed conflict and shall not be used in violation of those principles and rules. If the rules of international law referred to are applicable, in existence and binding at the time the framework convention is adopted, then it is inconceivable that they should become non-binding because of their inclusion in the framework convention. There can be no doubt that this is true of all peremptory norms of international law, pursuant to articles 53 and 64 of the Vienna Convention on the Law of Treaties, as we have previously indicated. Article 29 itself makes the same assertion, inasmuch as it stipulates that watercourses shall not be used in violation of those principles and rules. Is it conceivable, in the light of this provision, that it could be maintained that the framework convention is not binding on States in all its aspects and that it merely sets guidelines for the negotiation of international watercourse agreements? In our estimation, it is necessary to establish a classification of the provisions contained in the framework convention so that the applicable peremptory norms of international law are binding on all while other, procedural provisions and provisions on which there is no agreement are non-binding and States can contract out of their application, as we have previously proposed. On the other hand, if the principal function of article 29 "is, in any event, merely to serve as a reminder to States of the applicability of the law of armed conflict to international watercourses", as stated in paragraph 2 of the commentary on the article, we cannot overlook the fact that there are other norms of international law that are binding on States under the terms of other instruments, for example the aforementioned articles 53 and 64 of the Vienna Convention on the Law of Treaties.

As is clear from paragraph 3 of the commentary on article 29, among the rules and principles of international law applicable in the event of armed conflict are the 1907 Hague Convention concerning the Laws and Customs of Land Warfare and article 54 of Protocol I of 1977 Additional to the Geneva Conventions of 12 August 1949, which prohibit the poisoning of water supplies, and article 56 of the same Protocol, which protects dams, dikes and other works from attacks that may cause the release of dangerous forces and consequent severe losses among the civilian population. And there are many more such rules.

Article 30. Indirect procedures

This article shows a concern to require States to discharge their obligations, even in the case where there are conflicts between them, because those obligations serve the interests of all parties. It cannot therefore be maintained that the framework convention is merely a set of model rules for negotiations. At the very least, a classification of its provisions must be

made in order to identify those provisions that are binding and other provisions that may be violated whenever the States concerned see fit.

Article 31. Data and information vital to national defence or security

If it is the intention that every provision of the framework convention should be non-binding, then we do not believe that there is any justification for article 31, which stipulates that nothing in the framework agreement obliges a watercourse State to provide data or information vital to its national defence or security.

Article 32. Non-discrimination

Article 32 is another example that shows that some, at least, of the provisions of the framework convention (non-discrimination in the present case) are binding on States and that they cannot conclude agreements in violation of the framework convention. The reason for this is that non-discrimination is to be considered a peremptory norm of international law that is binding on all States. States may not violate that obligation on the grounds that non-discrimination is stipulated in the framework agreement and has thus become merely part of a set of model rules for negotiations.

Article 33. Settlement of disputes

1. We stress the importance of this article.

2. We propose that subparagraph (b) (vi) be amended to provide that the Commission itself shall determine the State that shall bear the expenses of the Commission or the proportion of the expenses to be borne by each State.

3. We likewise propose the addition of a clause to subparagraph (b) (iii) enabling the Commission to request any State to pay specified amounts to cover the Commission's expenses until such time as a final decision is made on the matter of the party that will bear those expenses in accordance with subparagraph (b) (vi).

4. We propose that the submission of a dispute to arbitration or judicial settlement for which provision is made in paragraph (c) should be made obligatory, since making arbitration or judicial settlement subject to the agreement of the States concerned may cause damage to a wronged State because of the refusal of another State or States to refer the dispute to arbitration or judicial settlement.

RESOLUTION ON CONFINED TRANSBOUNDARY GROUNDWATER

In the fourth preambular paragraph of the resolution, the Commission recognizes the need for continuing efforts to elaborate rules pertaining to confined transboundary groundwater but does not assign the task to a particular body or establish a timetable for its completion. The paragraph is also not reflected in the operative part of the resolution. We therefore propose that a resolution be adopted to address these aspects of the matter.